

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policies and Rules)
Governing Interstate Pay-Per-Call)
and Other Information Services)
Pursuant to the Telecommunications)
Act of 1996)

CC Docket No. 96-146

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COMMENTS OF THE INTERACTIVE SERVICES ASSOCIATION

The Interactive Services Association ("ISA") submits these comments in response to the Commission's Notice of Proposed Rule-making ("NPRM") in the above-captioned proceeding. The NPRM proposes new requirements governing interstate pay-per-call and other information services.

The ISA is the leading trade association devoted exclusively to promoting consumer interactive services worldwide. The association has approximately 350 members representing the full spectrum of industries providing telecommunications-based interactive services to consumers. Many ISA members are actively involved in the interstate 900 pay-per-call industry, either as interexchange carriers ("IXCs"), local exchange carriers ("LECs"), service bureaus, information providers ("IPs") or third party billing entities.

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I. SUMMARY OF POSITION

The ISA wholeheartedly supports the Commission's efforts to curb abusive and deceptive practices in the pay-per-call industry. However, the ISA urges the Commission to reconsider its proposal to classify interstate information services as "pay-per-call" simply because a carrier pays remuneration to an IP. The Commission should, instead, classify an information service as "pay-per-call" only if the cost of calling that service is greater than the cost of a comparable content neutral call. In this regard, the payment of remuneration to an IP should be classified as "just and reasonable" unless callers are paying a "premium" over normal content neutral transmission charges. Finally, while the ISA supports the Commission's proposed revision to its billing and collection rules to the extent that carriers are required to display the charges associated with 800 presubscription arrangements on a separate line of the telephone bill, the ISA believes that more significant revisions are necessary to address the growing problem of consumer abuse of pay-per-call-services.

II. DEFINITION OF PAY-PER-CALL SERVICES

The ISA urges the Commission to reconsider its tentative conclusion that "when a common carrier charges a telephone subscriber for a call to an interstate information service, any form of remuneration from that carrier to an entity providing or advertising the service, or any reciprocal arrangement between such entities, constitutes per se evidence that the charge levied

actually exceeds the charge for transmission."^{1/} Under the Commission's proposal, all information services provided through such arrangements would fall within the definition of "pay-per-call" and, thus, would be required to be offered exclusively through 900 numbers.^{2/} While the ISA appreciates the Commission's desire to eliminate loopholes in its existing pay-per-call regulations and to prohibit deceptive high-priced information services, the Commission's proposal would also prohibit programs that carriers have offered to their customers for years without any reported incidents of consumer abuse or deception.

AT&T currently offers a variety of programs under which they share savings on LEC access charges with business customers for inbound calls terminated at the customers' facilities. Callers who make such calls pay normal, content-neutral, tariffed transmission rates and may use any carrier of their choice. Under AT&T's Terminating Switched Access Arrangement ("TSAA"), AT&T shares its savings on LEC access charges with high-call volume customers who directly connect their telephone facilities to AT&T's network via dedicated access. Through this arrangement, AT&T and the customer can bypass the LEC and avoid the LEC's fee for terminated switched access. A portion of this savings, which is typically de minimis, is shared with the customer.

^{1/} NPRM ¶48.

^{2/} Id.

AT&T has many TSAA customers who would be adversely affected under the Commission's proposal. For example, some ISA members are aware of computer software companies which receive compensation under the TSAA program for each inbound long-distance customer service call they receive. Similarly, many universities and service bureaus participate in TSAA programs. Under the Commission's proposal, no form of remuneration could be paid to these telephone company customers unless their information services are offered via 900 numbers. However, if use of the 900 prefix is mandatory, consumers would likely pay substantially more for this information than they would by making a normal long-distance call.^{3/}

Because the ISA is not aware of any consumer complaints concerning the types of services described above, it urges the Commission to consider adopting a more narrowly targeted approach to address the concerns identified in the NPRM. Specifically, the ISA proposes that an interstate information service be classified as "pay-per-call" if the cost to call the service exceeds, by more than a de minimis amount, the cost of a comparable content-neutral call to the same location at the same time.^{4/} This proposal, like the Commission's, would prohibit exorbitantly priced information

^{3/} Transport and billing and collection charges for 900 services typically are \$.30 per minute and higher.

^{4/} The ISA suggests that comparable content-neutral rates be defined as the highest content-neutral rate offered by the three major IXCs (AT&T, MCI and Sprint) for a call to the same location at the same time. The ISA also suggests that the term "de minimis" refer to a price differential of no more than five percent (5%).

services.^{5/} However, the ISA's proposal would allow non-problematic programs like AT&T's TSAA to continue. In addition, it would not preclude the development of future interstate service offerings which, like TSAA, contribute to the provision of low cost services and do not circumvent the underlying intent of the Commission's pay-per-call rules.

Notwithstanding the lack of problems with TSAA type programs, the ISA recognizes that it may be appropriate to impose new consumer safeguards on information services offered via non-900 numbers. The Federal Trade Commission ("FTC") has announced that it will initiate a rulemaking proceeding this fall to apply its existing pay-per-call advertising and preamble requirements to other information services susceptible to abuse.^{6/} The ISA has already begun working with FTC staff on this matter, and is committed to work with the Commission, the FTC, and industry representatives to develop appropriate disclosures for these services.^{7/}

^{5/} See NPRM ¶10 and footnote 21.

^{6/} In the Telecommunications Act of 1996 ("1996 Act"), Congress gave the FTC authority to expand the applicability of its pay-per-call rules to information services which are not technically defined as "pay-per-call". By granting this authority to the FTC, Congress recognized that there could be information services accessed via non-900 numbers where the charge for the call does not exceed the transmission charge. 1996 Act at § 701(b)(2), which amends 15 U.S.C. § 5714(1).

^{7/} Neither the ISA nor the Commission proposals would prohibit an IP from entering into a revenue sharing arrangement with a foreign carrier. The Commission's proposal only prohibits the carrier that charges the subscriber for the call (i.e., the
(continued...)

III. JUST AND REASONABLE CARRIER PRACTICES

The Commission has asked whether any form of remuneration from a carrier to an entity providing or advertising an information service should be considered an unjust or unreasonable practice under the Communications Act.^{8/} The ISA believes that programs like TSAA should be classified as "just and reasonable" because such payments do not circumvent the pay-per-call rules which were designed to regulate those information services where callers pay a "premium" for the service.^{9/} Clearly, there is no direct or indirect "premium" being paid by callers in connection with a TSAA program since (i) callers can use any carrier to place their call and obtain the information; and (ii) the cost of the call would be the same for a comparable content neutral call.^{10/}

^{2/} (...continued)

U.S. carrier) from entering into such an arrangement with the IP. Thus, certain international information services (e.g., those accessed by dialing "809" or "011") would not be classified as "pay-per-call services" under either proposal. Nonetheless, it may be appropriate for the FTC to require certain cost disclosures or adopt other consumer protection safeguards for such international services as part of its pay-per-call rulemaking proceeding.

^{8/} NPRM ¶48.

^{9/} See, e.g., Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Report and Order, 8 FCC Rcd 6885 (1993) ("Pay-per-call services (also known as 'audiotext' or '900' service) provide telephone users a variety of recorded and interactive information programs for which they are charged rates different from, and usually higher than, the normal transmission rates for ordinary telephone calls." (footnote omitted)).

^{10/} The Commission's Common Carrier Bureau has indicated that "[a] carrier may lawfully provide service to information providers is [sic] only if it has absolutely no involvement or interest in the communications made through its network and does not engage in any action to encourage calls to a particular number or limit access to that number to callers using its transmission services."

(continued...)

The ISA also believes that its position is consistent with long-standing industry practices in other areas. Hotels, universities, private payphone owners and other aggregators that make telephones available to the public receive commissions from IXC's for presubscribing their telephones to a carrier. The value of these commissions is typically related to the call volume for the telephone in question. This practice has been followed by carriers for years and the Commission has declined to regulate it.^{11/}

IV. BILLING AND COLLECTION

The Commission proposes to modify its billing and collection rules to state explicitly that charges for presubscribed information services accessed through a toll-free number must be displayed separately from those for local and long-distance telephone service.^{12/} The Commission also seeks comment on the costs to

^{10/} (...continued)

September 1, 1995 Letter Ruling from the Common Carrier Bureau, Federal Communications Commission to Ronald J. Marlowe, Esq. Regarding the Legality of Certain Information and/or Entertainment Programs Provided Pursuant to Tariffed Rates for International Communications Services at 2 (DA 95-1905). With respect to TSAA and similar programs, the carrier has no interest or involvement in the communications in question, does not encourage calls to that number, or in any way prevent callers from accessing that service through another carrier's network.

^{11/} See, e.g., National Telephone Services, Inc., 8 FCC Rcd 654, 655 (1993) where the Commission determined that AT&T was not required to tariff its commission payments because Section 203(a) requires carriers to file only the classifications, practices and regulations affecting their charges. The Commission indicated that "each customer pays the full tariffed rate and AT&T's services are equally available through all telephones regardless of any commission payments".

^{12/} NPRM ¶46.

carriers for this separate billing.^{13/} In light of the relevant costs, the ISA recommends that carriers be required to display these charges on a separate line only, rather than on a separate page of the telephone bill.

In addition, the ISA urges the Commission -- together with the FTC -- to revise their 900 billing and collection regulations to address the growing problem of consumer abuse of pay-per-call service. It has been over three years since the Commission and the FTC adopted their pay-per-call billing and collection regulations implementing the Telephone Disclosure and Dispute Resolution Act ("TDDRA").^{14/} While the existing rules have provided consumers with protection from unscrupulous service providers, the pendulum may have swung too far, as some consumers are engaging in abusive practices which permit them to essentially obtain information services without charge. MCI estimates that chargebacks (i.e., customer refunds of 900 calls) in 1996 will be \$179 million, and the chargeback rate has increased approximately 20% during the last twelve months.^{15/} And both AT&T and MCI believe that consumer

^{13/} Id.

^{14/} TDDRA was implemented, in part, to address consumer complaints related to unfair billing practices in the information services industry and to assure that consumers were provided with an opportunity to initiate billing inquiries related to call to interstate information services.

^{15/} This information has been provided to the ISA by Don Klug, Senior Manager, 900 Service, at MCI. A declaration by Don Klug attesting to these facts will be submitted to the Commission as an addendum to this filing this week.

chargebacks are a significant problem for the 900 number industry.^{16/}

The ISA also urges the FCC to work closely with the FTC to enforce the existing pay-per-call billing and collection regulations and to take appropriate steps to standardize the pay-per-call billing and collection procedures adopted by LECs and alternate billing entities to comply with these regulations. To this end, the ISA requests that the Commission direct the Industry Open Billing Forum (to which all major carriers and alternate billing entities belong) to develop standardized billing and collection practices consistent with TDDRA and its implementing regulations which would include: (i) common record formats for 900 number services, 800 presubscription services and miscellaneous charges; (ii) common collections procedures; (iii) common reason codes for call adjustments and write-offs; and (iv) common use of the sixty (60) day limitations for consumers to initiate a complaint. The

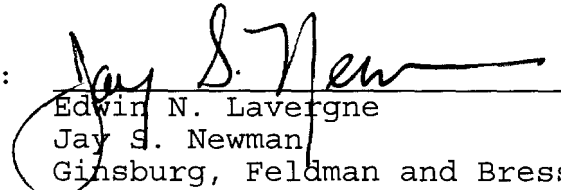
^{16/} See attached declaration of Robert Doyle, General Manager MultiQuest Services, at AT&T. A declaration by Don Klug at MCI attesting to this view will be submitted to the Commission as an addendum later this week.

development of such standards will ensure that industry participants will handle billing and collection matters in a consistent manner.

Respectfully submitted,

INTERACTIVE SERVICES ASSOCIATION

By:


Edwin N. Laverigne
Jay S. Newman
Ginsburg, Feldman and Bress,
Chartered
Suite 800
1250 Connecticut Avenue, NW
Washington, DC 20036
202-637-9000
Its Counsel

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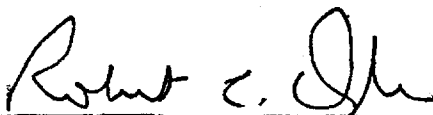
DECLARATION

I, Robert Doyle, do hereby declare and state as follows:

1. I am, General Manager, MultiQuest Services, of AT&T Corp. ("AT&T").
2. I have held this position since October 1, 1993.
3. In this position, I am responsible for overseeing all aspects of AT&T's activity in the pay-per-call arena.
4. It is my opinion that consumer chargebacks are a significant problem for AT&T and the 900 number industry as a whole.
5. I believe that there is an absolute need for standardization of billing and collection practices which are consistent with the requirements of the Telephone Disclosure and Dispute Resolution Act and its implementing regulations.
6. It is also my opinion that this lack of standardization has contributed to the problem of chargebacks for 900 number calls.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 23, 1996.

Signature:


Robert Doyle